

INDIANA LOBBY REGISTRATION COMMISSION

Proposed Final Advisory Opinion 2016-1

DIGEST

Provides formal guidance with respect to registration and reporting requirements under [IC 2-7](#) for those persons or entities that engage in "grassroots lobbying".

APPROVAL PROCESS

The Indiana Lobby Registration Commission (Commission) on its own initiative approved the initial draft of this proposed Final Advisory Opinion (FAO) at its public meeting held on June 1, 2016. Pursuant to the approval process set forth in FAO 97-05, the Commission will consider written comments on proposed FAO 2016-1 that are received by the Commission within thirty (30) days after proposed FAO 2016-1 is published in the Indiana Register. Written comments may be mailed to the Commission at 10 West Market Street, Suite 2940, Indianapolis, IN 46204, personally delivered to the Commission at that same address, or emailed to the Commission's Executive Director and General Counsel at charris@lrc.in.gov. The Commission will consider written comments received within the thirty (30) day period at its next public meeting. At that meeting, the Commission may:

- (1) approve the proposed FAO as published in the Indiana Register;
- (2) amend the proposed FAO and then have it published as amended in the Indiana Register with another thirty (30) day comment period; or
- (3) decide not to approve the proposed FAO.

FINAL ADVISORY OPINION 2016-1
"Grassroots Lobbying"

Statement of Facts:

Corporation X intends to utilize the services of firm Y to enlist the support of the general public for X's position on a bill pending before the General Assembly. The various options that X and Y have discussed include the following:

Scenario 1. Employees of Y would place calls to individuals and read a script prepared by Y. At the end of each call, Y's employee would provide the individual with the names, telephone numbers, and email addresses of the state Senator and Representative for the legislative districts in which the individual resides. Y's employee also would encourage the individual to contact those legislators to voice support for X's position on the pending bill.

Scenario 2. The facts are the same as in Scenario 1 except that before completing the call Y's employee would offer to immediately connect the individual to the state Senator or Representative, or both, by telephone or email.

Scenario 3. The facts are the same as in Scenario 1 except that Y would use its automated telephone system to place the calls, read the script, provide the contact information for the individual's state Senator and Representative, and encourage the individual to contact those legislators to voice support for X's position on the pending bill.

Scenario 4. The facts are the same as in Scenario 3 except that before the call is completed Y's automated system would offer to immediately connect the individual to the state Senator or Representative, or both, by telephone or email.

Legal Analysis and Opinions:

With respect to any legal analysis of the various scenarios set forth above one must consider the definition of "legislative person" in [IC 2-7-1-8](#), the definition of "lobbying" in [IC 2-7-1-9](#), the definition of "lobbyist" in [IC 2-7-1-10\(a\)](#), and the statement in [IC 2-7-2-6\(f\)](#) concerning communications between citizens of this state and members of the General Assembly. Those statutory provisions read as follows:

[IC 2-7-1-8](#)

"Legislative person"

Sec. 8. "Legislative person" means any of the following:

- (1) A member. (*A member of the General Assembly pursuant to [IC 2-7-1-10.5](#).)*
- (2) A candidate. (*A candidate for election to the General Assembly pursuant to [IC 2-7-1-1.3](#).)*
- (3) An officer of the general assembly.
- (4) An employee of the legislative department of state government.
- (5) A close relative of anyone described in subdivision (1), (2), (3), or (4). However, a lobbyist who is a close relative of a legislative person is not considered a legislative person.
- (6) A paid consultant of the general assembly.
- (7) An official of an agency of the legislative department of state government.

[IC 2-7-1-9](#)

"Lobbying"

Sec. 9. "Lobbying" means communicating by any means, or paying others to communicate by any means, with any legislative person with the purpose of influencing any legislative action.

[IC 2-7-1-10\(a\)](#)

"Lobbyist"

Sec. 10. (a) "Lobbyist" means any person who:

- (1) engages in lobbying; and
- (2) in any registration year, receives or expends an aggregate of at least five hundred dollars (\$500) in compensation or expenditures reportable under this article for lobbying, whether the compensation or expenditure is solely for lobbying or the lobbying is incidental to that individual's regular employment.

[IC 2-7-2-6\(f\)](#)

(f) Notwithstanding the definition of "lobbying" as specified [IC 2-7-1-9](#), in no instance shall the language of this chapter be construed to prohibit in any way free and open communication between any citizen of this state and members of the general assembly.

Each of the four scenarios set forth above makes it clear that none of the individuals contacted through Y's employees or automated telephone system would be compensated for communicating with a member of the General Assembly with respect to the pending bill. Thus, under [IC 2-7-1-10\(a\)](#) and [IC 2-7-2-6\(f\)](#), such an individual would not be considered a "lobbyist" and would not be required to register with nor report to the Commission.

For Scenario 1 and Scenario 3, the communication from Y's employees or automated telephone system would not provide a direct communication link between the individual contacted by Y and the individual's state Senator or Representative. In other words, the individual would have to take the initiative to make such a contact without any assistance from Y. Consistent with the advice previously provided by the Commission in Final Advisory Opinion 2002-1, the services that Y would be providing to X under either Scenario would not constitute "lobbying" as defined in [IC 2-7-1-10](#). Therefore, none of the parties involved (X, Y, and employees of Y) would be required to register with nor report to the Commission unless they engaged in other forms of lobbying that would trigger a need to so register and report.

Scenarios 2 and 4 lead to a different conclusion. For both of those Scenarios, Y would be offering to provide the direct communication link between the individual and the individual's state Senator or Representative. As a result, the services that Y would provide fall within the definition of "lobbying" as set forth in [IC 2-7-1-9](#). If we assume that X will pay Y at least \$500 during the applicable registration/reporting year (November 1 through October 31) to provide those services, then X would be required to register with and report to the Commission as an employer lobbyist. In addition, Y would be required to register with and report to the Commission as a compensated lobbyist.

If Y were to pay an employee at least \$500 in total compensation (wages, salary, cost of employer provided benefits, etc.) during a particular registration/reporting year with respect to the lobbying services provided to X under either Scenario 2 or 4, then the employee would be required to register with and report to the Commission as a compensated lobbyist. In such a case, Y would be required to also register with the Commission as an employer lobbyist. However, Y would file activity reports as a compensated lobbyist only.

The Commission also has been asked to provide advice with respect to registration and reporting requirements under [IC 2-7](#) if corporation X were to retain the services of another firm (referred to as A) to select and oversee the payments to the firm providing the lobbying services, which is Y in Scenarios 1 through 4. In such a case, it is the Commission's position that A would merely be functioning as an agent of X and as such would not be required to register with nor report to the Commission. The use of such an agent would not alter the registration and reporting requirements of X, Y, and Y's employees as previously described in this Final Advisory Opinion.

The Commission understands that there may be occasions when a firm such as Y uses the services of one who is considered an independent contractor rather than an employee in providing the lobbying services described in Scenarios 2 and 4. In such a case, the same \$500 compensation threshold would apply when determining if the independent contractor is required to register with and report to the Commission as a compensated lobbyist and if Y is required to register as an employer lobbyist.

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